

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF PETRY TELEVISION,	)	
INC. FOR ISSUANCE OF A CERTIFICATE OF	)	
PUBLIC CONVENIENCE AND NECESSITY TO	)	
PROVIDE DOMESTIC PUBLIC CELLULAR RADIO	)	
TELECOMMUNICATIONS SERVICE TO THE	)	
PUBLIC IN KENTUCKY RURAL SERVICE AREA	)	CASE NO.
NO. 8, WHICH INCLUDES BATH, BRACKEN,	)	91-351
FLEMING, LEWIS, MASON, MENIFEE,	)	
MONTGOMERY, NICHOLAS, ROBERTSON AND	)	
ROWAN COUNTIES, KENTUCKY, ANY OTHER	)	
NECESSARY APPROVAL, AND ESTABLISHMENT	)	
OF INITIAL RATES	)	

O R D E R

This matter arising upon petition of Petry Television, Inc. ("Petry") filed September 26, 1991 pursuant to 807 KAR 5:001, Section 7, for confidential protection of its construction cost estimate and pro forma income statement for the first 24 months following completion of construction, the Construction and Operating Services Agreement with Danbury Cellular Telephone Co. ("Danbury"), and the Switch Sharing Agreement with Danbury on the grounds that disclosure of the information is likely to cause Petry competitive injury, and it appearing to this Commission as follows:

Petry has applied for a Certificate of Public Convenience and Necessity to provide domestic public cellular telecommunications service in Rural Service Area No. 8. In support of its application, Petry has filed its construction cost estimate and

pro forma income statement for the first 24 months following completion of construction, a Construction and Operating Services Agreement with Danbury, and a Switch Sharing Agreement with Danbury, all of which it seeks to protect as confidential.

The information sought to be protected is not known outside of Petry and is known only to those employees who have a business need to know the information. Petry seeks to protect and preserve the confidentiality of the information by all appropriate means.

807 KAR 5:001, Section 7, protects information as confidential when it is established that disclosure is likely to cause substantial competitive harm to the party from whom the information was obtained. In order to satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

The cellular telephone market is competitive in that two providers are licensed to provide the service in each statistical area. The capital and operating costs contained in the construction cost estimate and pro forma income statement could be used by these competitors to structure their rates and market their service. Thus, disclosure of the information is likely to cause Petry competitive injury.

Similarly, the Construction and Operating Services Agreement and the Switch Sharing Agreement with Danbury would disclose to Petry's competitors information which would assist them in

determining the rates which Petry must charge for its services in order to break even. This information could also be used by Petry's competitors to market their services and, therefore, disclosure of that information is also likely to cause Petry competitive injury and the information is entitled to protection as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The construction cost estimate and pro forma income statement for the first 24 months following completion of construction, the Construction and Operating Services Agreement with Danbury, and the Switch Sharing Agreement with Danbury, which Petry has petitioned be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

2. Petry shall, within 10 days of the date of this Order, file an edited copy of the information with the confidential material obscured for inclusion in the public record, with copies to all parties of record.

Done at Frankfort, Kentucky, this 4th day of November, 1991.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

ATTEST:

  
Executive Director

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Commissioner